that it shall stand affirmed if a remittitur be entered, and such remittitur is entered. *Butt* v. *Stinger*, 4 Cranch (C. C.) 252, 4 Fed. Cas. 918. But where the appellate court reversed the original judgment and ordered a new trial unless the plaintiff should elect to take a judgment for a less amount, in which case the lower court was to enter a judgment for that sum, this was held to be a total destruction of the old judgment so that the case did not come within a provision of the bond which rendered the sureties liable in case of a partial affirmance by the superior court. *Lehmann* v. *Amsterdam Coffee Co.*, 151 Wis. 207, 138 N. W. 606, Ann. Cas. 1914A, 1299. And so where the condition of the bond was to prosecute a writ of error "to effect," and there was an affirmance entered by the superior court after the filing of a remittitur in accordance with the choice given the plaintiff by order of the court, the sureties were discharged, as the writ of error had been duly prosecuted and had been so effective as to alter the original judgment. *Seymour* v. *Gregory*, 10 Biss. 13, 21 Fed. Cas. 1115.

But, irrespective of statutes, in equity, where a decree is reversed in part and affirmed in part, such reversal does not destroy the lien of so much of the decree as is affirmed or unreversed. *Shepherd's Adm'r* v. *Chapman's Adm'r*, 83 Va. 215, 2 S. E. 273. The decision in the instant case is based partially on this analogy.

BILLS AND NOTES—ACCOMMODATION INDORSEMENT—BURDEN OF PROOF.—The payee of a promissory note signed jointly by the defendant and another, brought an action against the defendant to recover the amount thereof. The defendant answered that he signed the note for the accommodation of the payee. In passing upon the question whether the defendant signed for the accommodation of the payee, the court instructed the jury that the burden of proof was upon the defendant. *Held,* the instruction was correct. *Stubbins Hotel Co.* v. *Beissbarth* (N. D.), 174 N. W. 217.

An accommodation party is one who has signed the instrument as maker, drawer, acceptor or indorser, without receiving value therefor, and for the purpose of lending his name and credit to some other person. In an action on the instrument by the accommodated party want of consideration is a valid defense. *Peterson* v. *Tillinghast,* 112 C. C. A. 545, 192 Fed. 287. See also *Knapp & Co.* v. *Tidewater Coal Co.*, 85 Conn. 147, 81 Atl. 1063; *Keenan* v. *Blue,* 240 Ill. 177, 88 N. E. 553; *Conners Bros. Co.* v. *Sullivan,* 220 Mass. 600, 108 N. E. 503. In regard to their mutual rights and liabilities, the apparent relation, on the instrument, of the accommodation indorser and the accommodated party is immaterial. *Whitwell* v. *Crehore,* 8 La. 540, 28 Am. Dec. 141.

The Negotiable Instruments Law adopted in most of the States expressly provides that every negotiable instrument is deemed to have been issued for a valuable consideration, and every person whose signature appears thereon to have become a party thereto for value. N. I. L. (Va.), § 24, Va. Code, 1904, § 2841a; *First National Bank* v. *Stallo,* 160 App. Div. 702, 145 N. Y. Supp. 747; *Utah National Bank* v. *Nelson,* 38 Utah 169, 111 Pac. 907. Nor is the recital of a valuable considera-

tion essential to raise this presumption. *Mandeville* v. *Welch,* 5 Wheat. 277; *Peasley* v. *Boatwright,* 2 Leigh (Va.) 195; *Hunley* v. *Willis Lang & Co.,* 5 Porter (Ala.) 154; *Dean* v. *Curruth,* 108 Mass. 242; *Carnwright* v. *Gray,* 127 N. Y. 92, 27 N. E. 835, 24 Am. St. Rep. 424, 12 L. R. A. 845.

In the case of an accommodation party, the rule that the burden of proof is upon the defendant is seemingly supported by a number of decisions. *Backwood* v. *Clark,* 2 Sawy. 546, 18 Fed. Cas. 972; *Thompson* v. *Thompson,* 140 Cal. 545, 74 Pac. 21; *Bronston's Adm'r* v. *Lakes,* 135 Ky. 173, 121 S. W. 1021; *McLean* v. *Ryan,* 36 App. Div. 281, 55 N. Y. Supp. 232; *Newton* v. *Newton,* 77 Tex. 508, 14 S. W. 157. See 8 CORPUS JURIS 995. In most if not all of these decisions the real point decided is that the defendant must produce some evidence to overcome the presumption of consideration raised by the production of the instrument and proof of signatures. *Hudson* v. *Moon,* 42 Utah 377, 130 Pac. 774. The production of the note and proof of signatures makes a *prima facie* case of consideration. *Best* v. *Rocky Mountain Nat. Bank,* 37 Col. 149, 85 Pac. 1124, 7 L. R. A. (N. S.) 1035; *Huntington* v. *Shute,* 180 Mass. 371, 62 N. E. 380, 91 Am. St. Rep. 309; *National Lumberman's Bank* v. *Miller,* 131 Mich. 564, 91 N. W. 1024, 100 Am. St. Rep. 623. But when by a denial of this point the fact of consideration becomes an issue, then the burden rests upon the plaintiff to show by a preponderance of the whole evidence given at the trial that there was a consideration. *Tinker* v. *Midland Valley Mercantile Co.,* 231 U. S. 618; *Small* v. *Clewley,* 62 Me. 155, 16 Am. Rep. 410; *Delano* v. *Bartlett,* 6 Cush. (Mass.) 364; *Huntington* v. *Shute, supra; Conners Bros. Co.* v. *Sullivan, supra; Campbell* v. *McCormac,* 90 N. C. 491; *First National Bank* v. *Paff,* 240 Pa. 513, 87 Atl. 841; *Best* v. *Rocky Mountain Nat. Bank, supra.* Where the evidence is conflicting as to the presence of consideration the burden remains upon the plaintiff to establish from all the evidence produced that there was a consideration. *Tinker* v. *Midland Valley Mercantile Co., supra; Small* v. *Clewley, supra.* Nor is the rule varied by the fact that consideration is recited on the face of the instrument, as by the use of the words "value received." *Huntington* v. *Shute, supra.*

The sound doctrine appears to be that although the weight of evidence or, as it is otherwise expressed, the preponderance of the evidence, may change from side to side as the trial progresses, yet the burden which rests upon the plaintiff to establish the material averments of his cause of action by a preponderance of all the evidence never shifts. The plaintiff carries the burden of proof through the whole case, although he may be aided by such a rebuttable presumption of law, or such facts, as would *prima facie* support his contention. The defendant need do no more than counter-balance the presumption of the *prima facie* case. *Ginn* v. *Dolan,* 81 Ohio St. 121, 91 N. E. 141, 135 Am. St. Rep. 761, 18 Ann. Cas. 204, and note. Many cases, apparently *contra* to this rule, fail to distinguish between the term "burden of proof" in its strict and technical sense and the burden resting from time to time upon the defendant of going forward with the evidence to impeach or nullify the plaintiff's *prima facie* case. See note, 18 Ann. Cas. 204.

On reason and by the decided weight of authority it seems that the instant case was erroneously decided. The jury should have been instructed that the burden of proof was upon the plaintiff. The dissenting opinion of the Chief Justice states the correct rule.

CONTRACTS—INTERFERENCE WITH PERFORMANCE—INJUNCTION.—The plaintiff, while an infant, entered into a contract with defendants for the engagement of her services as an actress. Upon reaching her majority the plaintiff disaffirmed this contract, and entered into another contract with a third party. The defendants, representing to the latter that the plaintiff was still under a contract with them, induced the third party to break his contract with the plaintiff, agreeing to indemnify him for any loss that he might suffer by so doing. Suit was brought for an injunction to restrain defendants from intermeddling with the plaintiff's contract rights. *Held*, the injunction should be granted. *Carmen* v. *Fox Film Corporation et al.*, 258 Fed. 703.

It is a well settled rule of law that an action will lie against a stranger who maliciously induces one party to a contract to break the contract to the injury of the other. *Angle* v. *Chicago, etc., R. Co.*, 151 U. S. 1. Under its power to protect the contract rights of parties equity will enjoin strangers from inducing a breach of a contract for personal services or from assisting in the continuance of the breach, upon proof that damages will not afford an adequate and complete remedy, and provided the contract is not violative of public policy. *Beekman* v. *Marsters*, 195 Mass. 205, 80 N. E. 817, 122 Am. St. Rep. 232, 11 Ann. Cas. 332, 11 L. R. A. (N. S.) 201; *Flaccus* v. *Smith*, 199 Pa. 128, 48 Atl. 894, 85 Am. St. Rep. 779, 54 L. R. A. 640. See *Miles Medical Co.* v. *Park*, 220 U. S. 373. The rule is applicable whether the employment be for a fixed time or at the will of either party. *Moran* v. *Dunphy*, 177 Mass. 485, 59 N. E. 125, 83 Am. St. Rep. 289, 52 L. R. A. 115; *Brennan* v. *United Hatters of North America*, 73 N. J. L. 729, 65 Atl. 165, 9 L. R. A. (N. S.) 254. But see *Baker* v. *Metropolitan Life Ins. Co.*, 23 Ky. L. Rep. 1174, 64 S. W. 913, 55 L. R. A. 271; *Raycroft* v. *Tayntor*, 68 Vt. 219, 35 Atl. 53, 54 Am. St. Rep. 882, 33 L. R. A. 225; 1 VA. LAW REV. 412.

The rule has been held to apply also to the ordinary commercial contracts involving no employment or other distinctly personal relation. *Automobile Ins. Co.* v. *Guaranty Securities Corp.* (D. C.), 240 Fed. 222; *Knickerbocker Ice Co.* v. *Gardiner Dairy Co.*, 107 Md. 556, 69 Atl. 405, 16 L. R. A. (N. S.) 746; *American Law Book Co.* v. *Edward Thompson Co.*, 41 Misc. Rep. 396, 84 N. Y. Supp. 225. And this is in accord with the weight of authority. But in some States it is held not actionable to induce a breach of a contract which is not one of employment. *Boyson* v. *Thorn*, 98 Cal. 578, 33 Pac. 492, 21 L. R. A. 233; *Chambers* v. *Baldwin*, 91 Ky. 121, 15 S. W. 57, 11 L. R. A. 545, 34 Am. St. Rep. 165. The Federal courts have apparently made no distinction, but have held that an injunction will issue whether or not the contract be one of employment. See *Hartman* v. *Park* (C. C.), 145 Fed. 358; *Citizens' Light Co.* v. *Montgomery Light Co.* (C. C.), 171 Fed. 553.

It is no defense in cases such as the one under discussion that the